DOCUMENT RESUME

ED 343 228 EA 023 768

AUTHOR Riddle, Wayne Clifton
TITLE Conditional Deregulation of Federal Elementary and Secondary Education Programs: The "America 2000" Proposal. CRS Report for Congress.
INSTITUTION Library of Congress, Washington, D.C. Congressional Research Service.
REPORT NO CRS-R-91-531-EPW
PUB DATE 9 Jul 91
NOTE 7p.
PUB TYPE Viewpoints (Opinion/Position Papers, Essays, etc.) (120) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Accountability; Change Strategies; Educational Change; Educational Improvement; *Educational Policy; Elementary Secondary Education; Federal Aid; *Federal Programs; *Federal Regulation; Government Publications; School Districts; School Restructuring; Special Needs Students; Student Needs
IDENTIFIERS *America 2000; *Conditional Deregulation

ABSTRACT

Conditional deregulation of federal elementary and secondary education assistance programs, that is, waiving one or more program regulations in return for some additional accountability, has been proposed in recent years and endorsed by the Bush administration. The "America 2000" legislation proposes a broad authority for conditional deregulation of federal elementary and secondary education assistance programs. Similar legislation with respect to state regulations has been adopted by some states. Unlike earlier proposals to transform federal elementary and secondary education assistance programs into block grants," these proposals would reduce the number of requirements for the use of funds under a variety of programs, but would require in return new forms of accountability based on program results. (Author/MLF)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

EA

91-531 EPW
July 9, 1991

CRS Report for Congress

Congressional Research Service • The Library of Congress

ED343228

Conditional Deregulation of Federal Elementary and Secondary Education Programs: the *America 2000* Proposal

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Wayne Clifton Riddle
Specialist in Education Finance
Education and Public Welfare Division

SUMMARY

Conditional deregulation of Federal elementary and secondary education assistance programs--i.e., waiving one or more program regulations in return for some additional accountability--has been proposed in recent years by the National Governors' Association (NGA) among others, and endorsed by the Bush Administration. The Administration's *AMERICA 2000* legislation proposes a broad authority for conditional deregulation of Federal elementary and secondary education assistance programs. Similar legislation with respect to State regulations has been adopted by some States. Unlike earlier proposals to transform Federal elementary and secondary education assistance programs into "block grants," these proposals would reduce the number of requirements for the use of funds under a variety of programs, but would require in return new forms of accountability based on program results.

THE CONDITIONAL DEREGULATION CONCEPT

Recent conditional deregulation proposals differ in terms of the range of Federal education assistance programs included, the types of regulations that may be waived, the outcome accountability requirements that must be met, and the number or proportion of grantees that may apply for waiver authority. One similarity among the proposals is that they refer to Federal programs of aid to elementary and secondary education, not postsecondary education, primarily because most postsecondary aid is granted to students, not institutions.

Nature of Federal Education Program Regulations

Grantees are already provided with substantial flexibility in the use of aid under most Federal education programs. These programs generally focus upon a student population with special educational needs--e.g., disadvantaged, disabled, or limited English-proficient pupils--or a high priority subject area, such as science and mathematics. Program regulations are usually intended to provide *target accountability*: assuring that funds are used to serve pupils with the greatest of the needs addressed by the program; and *fiscal accountability*: assuring that funds provide a net increase in resources for those pupils, rather

EA 023 768

BEST COPY AVAILABLE

than simply replacing State or local funds for the same purpose. Many programs also include requirements for: conducting an assessment of student needs; evaluating and reporting program results; involving parents in planning and implementing programs; or serving private school pupils.

There are also general regulations that apply to all recipients of Federal education assistance. Civil rights regulations prohibit discrimination against individuals on the basis of race, ethnicity, national origin, sex, or handicapping condition. Finally, other Federal regulations apply to local educational agencies (LEAs) in their role as employers. Grantees that violate these regulations face the possibility of having to repay funds to the Federal Government, or being prohibited from receiving further grants.

However, State and local education agencies are given wide scope in other aspects of the use of Federal education assistance. Such matters as grade levels, subject areas, instructional techniques, etc., have typically been left to State and local discretion. Exceptions have been few--e.g., the requirement that most grantees under the Bilingual Education Act (BEA) use bilingual instructional techniques, or that disabled children be taught in the "least restrictive environment"--or have applied to competitive programs that constitute a small share of Department of Education (ED) funding. Further, the degree of flexibility provided to grantees has been increased in recent years under some Federal programs. For example, 1981 and 1988 amendments to the Chapter 1 program for disadvantaged children substantially extended local discretion over the uses of funds. An especially wide range of flexibility is authorized under the chapter 1 schoolwide plan provision, for which schools with particularly high pupil poverty rates are eligible.

The specific complaints most frequently made against Federal education program regulations by proponents of conditional deregulation appear to be based on prohibitions against commingling of funds under different Federal programs with each other or with State and local programs, restrictions on the uses of instructional equipment purchased with Federal program funds, and--more broadly--a categorical approach to both programs and pupils that is said to characterize Federal programs. Prohibitions against commingling of funds result from efforts to establish fiscal accountability; restrictions on the use of instructional resources to the pupils eligible to be served are designed to ensure target accountability. In general, Federal elementary and secondary education programs are categorical in the sense of being aimed at meeting the special needs of certain types of pupils--disabled, limited English-proficient, "at-risk" of dropping out of school, etc.

While such categorization of programs may be appropriate to the purposes of targeting resources to those in need, it *may* have undesirable effects. Some of these unintended effects may include: fragmentation of services to children, with challenges for coordinating special program instruction with their regular instruction; inefficient use of resources, that may remain unused when not required by the special needs pupils; treatment of partial needs when a more

coherent focus on the whole child might be more effective, especially with respect to children with multiple special needs; or instruction of pupils in separate settings, whether or not this is explicitly required by the legislation, when this might not be the most effective instructional technique. Some of these problems with categorical program structures may be based on misunderstandings of the requirements of Federal statutes and regulations, or overly strict State or local interpretations of these. Others may be the inevitable effects of efforts to assure that Federal aid is focused on pupils most in need, coupled with grantee efforts to avoid problems with Federal program audits. Whatever their basis, and regardless of whether regulatory burden has been reduced in recent years, State and local education officials sometimes complain about these, and other, constraints on the use of Federal funds.

Recent Endorsements of Conditional Deregulation

The NGA has promoted conditional deregulation in its educational policy recommendations related to the national education goals that the governors and President Bush adopted at their summit conference in 1989. Such deregulation is usually recommended as part of a broader process of school "restructuring." School "restructuring" is a currently popular term used to refer to a wide variety of changes in the ways schools operate; examples include enhanced authority for school building staff, new forms of accountability and assessment, or parental choice of schools. The text of the statement issued at the 1989 summit focused on "flexibility and accountability" in a "Federal-State partnership" for educational improvement. According to that statement, "[A]t present, neither Federal nor State and local laws and regulations focus sufficiently on results, or on real educational improvement for all children. Federal and State executives need authority to waive statutory and regulatory provisions in return for greater accountability for results."[1]

Another organization, the National Center on Education and the Economy (NCEE), in its 1989 report, *To Secure Our Future, the Federal Role in Education*, recommended that "[T]he aim of Federal policy should be to create the conditions under which local people have strong incentives to meet the needs of students and maximum freedom to figure out how to produce those results" (p. 19). The NCEE report emphasized the need to develop improved pupil assessment systems, and to establish high standards for pupil performance. However, once those standards are established, the NCEE advises that local principals, teachers, and administrators be given maximum freedom from Federal and State regulations in conducting their instructional programs. H.R. 5932, a bill passed by the House, but not enacted, in the 101st Congress, included a provision which was based partially on the NCEE recommendations. This would have authorized increased flexibility for a limited number of schools and LEAs, with respect to regulations governing some Federal education programs, in return for improvements in the performance of pupils served.

---

[1]Summit statement published in *Education Week*, Oct. 4, 1989, p. 12.

State Programs of Conditional Deregulation

According to the NGA report, *the Governors' 1991 Report on Education, 1989*, 21 States have adopted policies authorizing waivers of State regulations for LEAs or individual schools. Typically, the authority is limited to a small number of schools or a narrow range of regulations. For example, South Carolina frees schools determined to be especially successful from a variety of reporting requirements and certain other State mandates. In the State of Washington, the 21 schools that participate in the Schools for the 21st Century program may request waivers from a variety of State and local statutes and administrative regulations. The 10 schools participating in Maine's Restructuring Schools Project are similarly eligible for waivers of State regulations that may interfere with their restructuring plans.

An exception to this narrow focus is North Carolina, which has a wide-ranging deregulation authority, for which every LEA may apply. Greater flexibility in the use of certain State funds is also authorized for LEAs participating in the Performance-Based Accountability program. In return for the regulatory waivers and funding flexibility, LEAs must establish and commit themselves to meeting student performance goals. The first of these waivers were implemented during the 1990-91 school year. A similarly wide ranging authority for LEAs to request regulatory waivers, tied more explicitly to school "restructuring" plans and to the national education goals, was recently adopted by the Indiana State legislature (Indiana 2000 schools).

***AMERICA 2000* Proposal**

Legislation based on the Bush Administration's *AMERICA 2000* strategy (S. 1141, H.R. 2460) includes as title IV, part A, a proposal for "Educational Reform Through Flexibility and Accountability." Under this proposal, any LEA could request a waiver of most regulations under all Federal education programs. Waivers would cover a period of 3 years, with a further 2 year extension authorized under certain circumstances. Local educational agencies would apply for the waivers through the Governor of their State. Applications would identify the Federal programs to be included in the proposed project; the regulations to be waived and the reasons why the waivers are requested; State and local regulations to be waived as well; goals for the project and the means by which progress toward meeting them will be assessed; and the characteristics of schools and pupils to be involved in the project. Project goals would include, but not be limited to, improving the achievement of disadvantaged pupils, who are defined to include limited English-proficient and disabled children.

In determining whether to approve the waiver requests, the U.S. Secretary of Education would consider the comprehensiveness of the project, the extent to which existing regulations impede educational improvement, the plans for accountability, the significance and feasibility of project goals, and the State and local requirements that will also be waived. LEAs must submit an annual report

to ED that describes how the project is meeting its goals; a summary of these reports would be sent to the Congress every 2 years.

Regulatory waivers may not affect the allocation of Federal funds. In addition, certain regulations may **not** be waived under this proposed authority, including: fiscal accountability requirements to maintain State and local spending levels; requirements for equitable participation for children attending private schools; prohibitions against discrimination on the basis of race, creed, national origin (title VI of the Civil Rights Act of 1964), disability (section 504 of the Rehabilitation Act of 1973), sex (title IX of the Education Amendments of 1972), or age (the Age Discrimination Act of 1975); regulations regarding privacy of pupil records and pupil participation in certain forms of tests (sections 438 and 439 of the General Education Provisions Act); or certain requirements under the Individuals with Disabilities Education Act (IDEA).

Selected Issues Regarding the *AMERICA 2000* Conditional Deregulation Proposal

The ultimate question regarding conditional deregulation authority is whether the benefits of program regulations exceed their costs--i.e., the barriers they may present to effective educational innovations. All regulations presumably were adopted with good intentions, usually to try to prevent aid grantees from misusing Federal funds in some ways that previous aid recipients had done, or might reasonably be expected to do. However, it is possible that some of these regulations may sometimes do more harm than good. It is also possible that State and local education officials can be trusted to use Federal aid effectively and fairly more than is implicitly assumed in Federal regulations.

Programs Included

With any proposal to authorize the waiver of regulations, the choice of programs to which the authority applies may be questioned. One issue is the significance of the loss of assurance that certain subjects will be taught, specific types of disadvantaged children will be served, or specific instructional techniques be applied, as under most existing programs. Under the *AMERICA 2000* bill, waiver requests would apparently be specific to individual programs and regulations, but could include most regulations under any program. Thus, the main question becomes whether all ED programs are appropriate for this authority. Of particular concern are programs where the focus on specific pupil needs or instructional methods is an essential element. Such programs include those under the IDEA, which serves the special needs of disabled children, and the BEA, which requires use of a particular instructional method in most cases.

Regulations Included and Excluded

Regulations that may **not** be waived as part of the *AMERICA 2000* proposal is relatively short but significant. Civil rights and safety regulations, plus requirements for participation by private school pupils, are widely

considered to be critical aspects of federally funded programs. Fiscal accountability requirements are included to assure that LEAs do not use their increased flexibility to supplant State and local revenues with Federal funds. The restriction against modifying procedures for allocating Federal funds among the LEA's schools assures that funds will continue to be distributed to areas targeted under current legislation--such as the low income areas for which chapter 1 grants are intended. The exceptions for regulations regarding protection of the privacy of educational records and from certain forms of pupil testing reflect the value placed on those protections by the Administration.

Major regulations regarding the education of disabled children also may not be waived. Given the unique nature of the programs for education of the disabled, and the restrictions on waiving regulations under these programs, it might be questioned whether the IDEA should be included among the programs for which any regulations may be waived. Finally, it is noteworthy that parental involvement regulations are among those that may be waived, considering the universal emphasis on the importance of such involvement.

Scope of the Waiver Authority

The primary issue here is whether the waiver authority should be available to every LEA in the Nation, as provided in the *AMERICA 2000* proposal, or be limited to a number of demonstration projects until its effects are examined. In view of the uncertainty over the effects of such waiver authority, it might be appropriate to conduct a trial demonstration before extension to the entire Nation. The similar provision in H.R. 5932, 101st Congress, applied to only a limited number of LEAs. Conversely, if current program regulations are a significant barrier to educational reform, and it is assumed that the Secretary of Education, Governors, and LEAs would use this authority responsibly, there may be no reason to limit the potential number of participating LEAs.

Accountability Mechanisms

The primary accountability requirement in the Administration's proposal is that the U.S. Secretary of Education "shall terminate a project and its associated waivers if [he or she], at any time, determines it is not making acceptable progress toward meeting its goals" (section 402 of the bill). The nature of the goals and the definition of "acceptable progress" are left to the applicant school districts, the States, and ED. Such ambiguity is consistent with traditions of State and local control of most aspects of education, the tremendous variety of achievement tests and other assessment instruments used in different States and LEAs, and debate over the validity of many such instruments, especially for disadvantaged children. Nevertheless, it might be appropriate to include more specific accountability requirements in the proposal. Such requirements need not refer to specific score levels or tests, but might specify the kinds of performance measures to be included in a regulatory waiver project, and the kinds of pupils whose performance must improve.